

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application and for courtesies extended during the phone call regarding the change in power of attorney for this case and for issuing a new final Office Action resetting the time period for reply.

Disposition of Claims

Claims 1-34 are pending in this application. Claims 1 and 32 are independent. The remaining claims depend, directly or indirectly, from claims 1 and 32.

Rejection(s) under 35 U.S.C. § 102

Claims 1-3 and 32 are rejected under 35 U.S.C. § 102(a) as being anticipated by US Patent No. 6,885,801 ("Shankar"). This rejection is respectfully traversed.

Applicant continues to assert that conception of the present invention occurred before the priority date of the Shankar reference, and therefore Shankar is not prior art to the referenced application. In the final Action, the Examiner asserts that the evidence submitted with the original 37 C.F.R. § 1.131 Declaration is ineffective to overcome the Shankar reference, because the evidence fails to establish diligence from a date prior to the date of reduction to practice of the Shankar reference to either a constructive reduction to practice or an actual reduction to practice. In response to the Examiner's rejection of the original 37 C.F.R. § 1.131 Declaration submitted by the Applicant, Applicant hereby submits a revised 37 C.F.R. § 1.131 Declaration, signed by a co-inventor Aymeric Perchant, of this case. The revised § 1.131 Declaration sets forth pertinent facts regarding diligence of Aymeric Perchant from prior to the priority date of

Shankar (December 2001) to the constructive reduction to practice, *i.e.*, the filing date of the priority application related to the present application, July 18, 2002.

Specifically, the diligence evidence submitted along with the revised § 1.131 Declaration includes 10 documents related to image processing and the furtherance of the concept of the present invention. The inventor's revised § 1.131 Declaration includes a table that details the description, date, title, and authors of each of the documents submitted. The description portion of the table provides a brief overview of each document and the relevance of each document to image processing. This description, attested to by the co-inventor, is sufficient to show diligence from November 2001 (the date of the earliest document attached as evidence), which is prior to the December 2001 priority date of Shankar, to August 2002, which is after the filing date of the priority application related to the present application of July 18, 2002. Thus, the revised § 1.131 Declaration establishes diligence between the dates required.

In addition, the Examiner asserts that the original § 1.131 Declaration was insufficient to establish a conception of the invention prior to the effective date of the Shankar reference, because the Examiner is unable to ascertain the exact date of conception as the laboratory notebook pages do not show the date and are not in English. In response, Applicant hereby submits translated pages of relevant laboratory notebook pages. A statement verifying the translation is also provided, signed by the translator, Aymeric Perchant. The translated pages clearly show conception of the present invention as early as July 2001.

The Examiner commented during the telephone conversation with Applicant's representative, that while the day and date were shown on the laboratory notebook pages, the year was not written along with the day and date, and therefore, the Examiner could not ascertain the year in which the laboratory notebook pages were written. The Examiner also asserted that

the cover page of the laboratory notebook page was not translated, and that even if the cover page was translated and included the year, the Examiner could not assume the same year for each laboratory notebook pages. In response to the Examiner's assertions, Applicant hereby submits a translated cover page of the laboratory notebook, which clearly details the year of the notebook as 2001. The range shown on the cover page, in fact, is July-December 2001. Thus, the notebook evidence shows that the conception date is at least as early as July 2001, which is prior to the December 6, 2001, date of the Shankar reference.

Further, Applicants respectfully assert that the original pages of the laboratory notebook include a date of 23/07 Lundi and 24/07 Mardi. This pattern fits the year 2001 (July 23, Monday; July 24 Tuesday, *See* translated notebook pages), because in 2001, a July 23 fell on a Monday and July 24 fell on a Tuesday. The next time a year fits this pattern is 2007, which is clearly too late to be relevant in the referenced case, because it is after the filing date of the present application. Thus, the Examiner's assertion that the year cannot be ascertained from the laboratory notebook pages is incorrect.

In view of the above, the Applicant asserts that all evidence required by the Examiner, including translated pages of relevant laboratory notebook pages clearly showing a date of conception, and diligence evidence, is submitted by this reply. Accordingly, favorable consideration of the revised § 1.131 Declaration is respectfully requested.

Rejection(s) under 35 U.S.C. § 103

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of NPL document "Hybrid Image Segmentation Using Watersheds and Fast Region Merging" (hereinafter "Harris"). Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as being

unpatentable over Shankar in view of Harris, and further in view of US Patent No. 4,926,257 ("Miyazaki"). Claims 26-30 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of US Patent No. 5,764,809 ("Nomami"). For the reasons set forth below, these rejections are respectfully traversed.

Each of the aforementioned §103 rejections are based on Shankar as the primary reference. As described above, Shankar is not valid prior art to this application, as evidenced by the attached declaration under 37 C.F.R. § 1.131, accompanying laboratory notebook pages, and the spreadsheet detailing the contents of the notebook pages. As stated in the declaration, the present invention was conceived and reduced to practice with due diligence prior to the effective filing date of Shankar (*i.e.*, prior to December 6, 2001). In view of the above, Shankar may not be used to support the aforementioned 35 U.S.C. § 103 rejections. As the various secondary prior art references admittedly fail to teach all of the elements of the claims, as is evidenced by the fact that they are cited solely to teach specific features recited in dependent claims, it is clear that the various secondary prior art references, whether considered alone or in combination, cannot render the claims of the present application obvious.

In view of the above, withdrawal of the aforementioned rejections with respect to the dependent claims is respectfully requested.


Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number

listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591
(Reference Number [17452/005001]).

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Respectfully submitted,

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Attachments (Statement regarding Translation of Lab Notebook Pages)
(Revised Declaration under 37 C.F.R. § 1.131)